

**THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

X-CALIBER FUNDING LLC,

Plaintiff,

v.

MARK B. PETERSEN,

Defendant.

Case No.: 1:24-cv-05529

MARK B. PETERSEN,

Third-Party Plaintiff,

v.

JOSEPH C. TUERA, WALNUT CREEK  
MANAGEMENT, L.L.C., and ILLINOIS  
DEBY ACQUISITION COMPANY, L.L.C.,

Third-Party Defendants.

**DECLARATION OF JOHN C. KESSLER, ESQ. IN SUPPORT OF  
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**

**JOHN C. KESSLER, ESQ.** declares as follows:

1. I am an attorney with Blank Rome LLP, counsel for Plaintiff X-Caliber Funding LLC ("Plaintiff") in the above-captioned action. I respectfully submit this Declaration in Support of Plaintiff's Motion for Summary Judgment against defendant Mark B. Petersen ("Defendant"). I have personal knowledge of the matters set forth herein.

2. Attached hereto as **Exhibit 1** is a true and correct copy of the May 21, 2024 Order Approving Stipulation to Resolve (I) X-Caliber's (A) Motion to Dismiss, (B) 543 Motion, and (C) DIP Objection and (II) the Debtors' MT4 Motion to Dismiss ("Resolution Order"), filed as

Docs. 340 and 340-1 in the matter captioned *In re SC Healthcare Holding, LLC, et al*, Case No. 24-10443 (D. Del.) (the “Bankruptcy Action”).

3. Attached hereto as **Exhibit 2** is a true and correct copy of the March 21, 2024 Declaration of David R. Campbell In Support of Debtors’ Chapter 11 Petitions and First Day Pleadings (“Borrower Declaration”), filed as Doc. 44 in the Bankruptcy Action.

4. Attached hereto as **Exhibit 3** is a true and correct copy of X-Caliber Funding LLC’s and X-Caliber Capital, LLC’s July 3, 2024 Notice of Non-Consent to Sale, filed as Doc. 610 in the Bankruptcy Action.

5. Attached hereto as **Exhibit 4** is a true and correct copy of the docket report in the Bankruptcy Action as of October 30, 2024 during the time period surrounding the entry of the Resolution Order.

6. Attached hereto as **Exhibit 5** is a true and correct copy of Defendant’s October 25, 2024 Omnibus Motion for Leave to Intervene and to Oppose Receiver’s Emergency Motion to Close El Paso Facility (without exhibits), filed as Doc. 61 in the matter captioned *X-Caliber Funding LLC v. El Paso HCC, LLC, et al.*, Case No. 3:24-cv-50034 (N.D.Ill.) (the “Receivership Action”).

7. Attached hereto as **Exhibit 6** a true and correct copy of the docket report in the Receivership Action as of October 30, 2024.

8. Attached hereto as **Exhibit 7** is a true and correct copy of the Voluntary Petition for Non-Individuals Filing for Bankruptcy (collectively, the “Petitions”) and Joint Written Consent, filed as Doc. 1 in the Bankruptcy Action.

9. Attached hereto as **Exhibit 8** is a true and correct copy of the Order (I) Approving Asset Purchase Agreement, (II) Authorizing the Sale of All or Substantially All of the Debtors’

Acquired Assets Free and Clear of all Liens, Claims, Interests, and Encumbrances Other Than Assumed Liabilities and Permitted Encumbrances, (III) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, and (IV) Granted Related Relief (the “Sale Order”), filed as Doc. 653 in the Bankruptcy Action.

10. Attached hereto as **Exhibit 9** is a true and correct copy of the Receivership Status Report dated March 25, 2024, filed as Doc. 32 in the Receivership Action.

11. Attached hereto as **Exhibit 10** is a true and correct copy of the Receivership Status Report dated May 10, 2024, filed as Doc. 39 in the Receivership Action.

12. Attached hereto as **Exhibit 11** is a true and correct copy of the Receivership Status Report dated July 12, 2024, filed as Doc. 42 in the Receivership Action.

13. Attached hereto as **Exhibit 12** is a true and correct copy of the Receivership Status Report dated August 1, 2024, filed as Doc. 47 in the Receivership Action.

14. Attached hereto as **Exhibit 13** is a true and correct copy of the Receivership Status Report dated August 30, 2024, filed as Doc. 51 in the Receivership Action.

15. Attached hereto as **Exhibit 14** is a true and correct copy of the Receivership Status Report dated September 27, 2024, filed as Doc. 51 in the Receivership Action.

16. Attached hereto as **Exhibit 15** is a true and correct copy of the docket report in the matter captioned *United States ex rel. Bogina v. Medline Industries, Inc.*, Case No. 11-cv-05373 (N.D.Ill.)

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed: October 30, 2024

/s/ John C. Kessler  
John C. Kessler